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From War to Peace Pamphlets.

No. 5.

How to Enforce Laws of War.

By SENOR S. ^{antiago}PÉREZ TRIANA,

Delegate Plenipotentiary from Colombia

to The Hague Conference of 1907, and subsequently

Member of the Permanent Court of Arbitration at The Hague.

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Nos. 1 & 2 by Mark H. Judge,

Nos. 3 & 4 by C. F. Ryder,

No. 5 by Senor S. Pérez Triana, who represented Colombia
at The Hague Conference of 1907.

No. 1.—The War and the Neutral Powers. Second Edition. 5" x 8", 32 pages in cover. Threepence. No. 2.—The Men Behind the War. 5" x 8", 8 pages. Twopence. No. 3.—The War and International Good Faith. 5" x 8", 12 pages. Twopence. No. 4.—What a Fight to a Finish Means. Second Edition. 5" x 8", 8 pages. Twopence. No. 5.—How to Enforce Laws of War. 5" x 8", 8 pages. Twopence. P. S. King & Son Ltd., and all Booksellers.

THE proposal made in Pamphlet No. 1 is summed up in the concluding paragraph of Section II. as follows:—" Thus Conventions solemnly made by the German Government with the civilized nations of the whole world are, within seven years, utterly disregarded by that Government, which has invaded the territories of two Neutral Powers, declared in these Conventions to be inviolable, and in one case has bombarded unfortified cities and laid waste the country side. Luxemburg protested but was too weak to resist. Belgium protested and is valiantly resisting. The other Neutral Powers who were parties to the Conventions cannot but condemn and protest against this outrage on one of the first principles of civilized life. To fail in doing so would be to condone this breach of International Law, and, indeed, to invite the German Government to invade any other neutral territory that may stand in its way. The least the Neutral Powers can do is to meet in Conference to consider forthwith how they should deal with the situation which Germany's breach of their and her own Conventions has brought about."

The Opinions are given in quotations from upwards of forty letters on the proposal.

How to Enforce the Laws of War.

By SENOR S. ^{Santiago}PÉREZ TRIANA.

THE "FROM WAR TO PEACE" Movement for hastening the time when in International affairs law shall take the place of physical force in settling disputes between the Nations has my cordial support, in proof of which I need only refer to my action as a member of The Hague Conference of 1907. Pending the advent of that happy time it is of the greatest importance to ensure respect for the Laws of War, and some of the best work done at The Hague in 1907 was the framing of laws which would reduce the horrors of war, such as that which provides that "Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected."

In the preamble to Convention IV., on the laws and regulations of warfare on land, it is stated that "it does not enter into the intention of the High Contracting Parties that cases not therein provided for should be left to the arbitrary appreciation of the chiefs in command of the armies owing to their not having been stipulated in writing."

It is furthermore stated that "Pending the enactment of a complete code of the laws of war, the said High Contracting Parties consider it opportune to place it on record that in the cases which should not have been included in the regulations adopted, the populations and the belligerents remain under the safeguard and the empire of the principles of the Law of Nations, as established by the practices and

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usages of civilized nations, by the laws of humanity, and by the demands of the public conscience."

Article 50 of the Regulations of Convention IV. expressly enacts the rule that "no general penalty, pecuniary or otherwise, may be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible."

Article 44 of the same Regulations "forbids the belligerents to force the population of occupied territory to give information about the other belligerent army or about its means of defence."

Both Germany and Austria-Hungary have refused their assent to Article 44. "Forcing" may include anything from terrorizing and torturing to killing; it is indeed an ominous reservation.

Since the invasion of Belgium by Prussian troops the air is heavy with the burden of complaint; it has stirred the conscience of mankind throughout the world into a feeling of questioning awe-stricken indignation. Are these horrors possible in our days? Can nothing be done to stop them, or to mitigate them, so as to cleanse contemporary humanity from the stain of infamy?

Where action is possible, no matter how forlorn, inaction becomes complicity. And in the present circumstances all the high roads of redemption are not barred. An effort may be attempted which would also serve the interest of the German people, as it would help to place responsibilities where they belong.

It has been the law of war, throughout the ages, that the will of the victor is supreme. The Allies have covenanted that no peace shall be signed separately by any one of them. They may, and surely will, demand and impose

pecuniary indemnities, territorial remodellings, and political reconstructions; let them also announce that, when concluding peace, all military commanders and officers and any other functionaries that may have been in power in occupied territory at the time of alleged outrages against the elementary laws of humanity, shall be tried by special Courts, so constituted as to fully protect the accused in all their rights, and the condition of war to constitute no extenuating circumstances for wanton cruelty or infamous inhumanity, even as drunkenness is not an excuse for breaking the law.

The neutral nations should demand the application of this principle to all the belligerents, and the Allies should bind themselves to this. It should also be enacted that fugitives from these regulations should be subject to the laws of extradition at the request of the injured Government. Reprisals in the wake of victory, like all vicarious retribution, are fundamentally immoral, and their possibility is no salutary deterrent of criminals in the abuse of power. But the shadow of punishment may, in some measure at least, accomplish such a consummation.

This war recognises no neutrals in its consequences. "The continuity of civilisation" is indeed at stake. The fate of small nationalities the world over is being fought for in the battlefields of Central Europe. As a citizen of a small Republic I am entitled to make this proposal. Furthermore, it was the privilege of Colombia, my country, to propose at the Conference in 1907 the limitation of the use of automatic contact mines to purposes of defence. The proposition was supported by Great Britain but rejected by Germany. I had the honour to submit it as Colombian delegate. Had it passed thousands, of innocent lives would have been spared.

My suggestion is primarily predicated on victory, which makes supreme the will of the victor. An International Court for the purpose is already in existence; there would be no reason not to apply to the Permanent Court of Arbitration at The Hague, extending the scope of its functions.

The question arises: Is military discipline, that is to say, obedience to a superior command, adequate reason to perpetrate crime and to render criminal acts unpunishable because the agent was simply obeying orders? No law of discipline should cover crime. And where or when it does such a law is infamous and should be stamped out, and the harmony of justice re-established. If "superior orders" are alleged, the quest for the criminal should follow those orders to their source, even if that source might happen to be a general in command, a military governor, a general staff, or a reigning monarch. Neither numbers nor pre-eminence of station should be allowed to stand in the way. Why should a criminal general staff, for instance, responsible for inhuman acts and heinous breaches of the laws of war, enjoy the privilege of impunity? If a monarch may be dethroned after defeat, why should he not be tried, if accused of crimes?

At the root of the general appreciation of these matters lies a monstrous misconception of morals, advocated by Bernhardt to-day—and by all the great criminals of history, explicitly or otherwise. It is maintained that the collectivity—*i.e.*, the nation—can legitimately perform acts which in the individual would be criminal. Responsibility is thus diluted by means of complicity: all that is needed for crime to become virtue is that it should be perpetrated by millions of men acting as a nation.

It may be safely assumed that even a half-demented monarch would pause in ordering a series of strategical

atrocities intended to terrorise a doomed region if the shadow of ignominy, no matter how remote, loomed personally for himself in the ever possible contingency of defeat.

The task of bringing the responsibility home to the real culprits is an arduous but not an impossible one; it cannot be prepared nor achieved by a pusillanimous spirit of reverence for established routine, behind which lurk reaction and the tyrannies of life.

Committees have and are collecting evidence. The information thus obtained should serve the high moral purpose, beneficial to all belligerents alike, of placing the awful responsibilities where they belong; the mere "shocking" of the public conscience, bound to be short lived in the overburdened history of the present hour, would indeed be an incomplete endeavour—nay, even a culpable omission.

The greater part of the above was embodied in a letter which was published in *The Times* of September 17th last, and was commented on in the *Daily News* of October 19th by Sir Edward Fry, the Ambassador Extraordinary for the United Kingdom to The Hague Conference of 1907. Sir Edward Fry refers to several of the outrages which seem only too well evidenced, and then says:—

"Senor Triana, the late able Minister of Colombia at the Court of Saint James', has, in a letter to *The Times* of September 17th, suggested the trial of all officers who may have been in power in occupied territory at the time of alleged outrages against the elementary laws of humanity. Some such procedure, with careful provisions to ensure the impartiality of the tribunal, and with power to award adequate punishment and restitution and compensation to an unlimited extent, would seem to be a reasonable demand to make, to satisfy the outraged sense of justice of the civilised world. . . .

"It is encouraging to observe that in spite of all the sorrow and sadness that fill every heart; in spite of the gloom which hangs over the future, there is springing up in the hearts of man a profound hope that from out of the welter of bloodshed and misery may arise a better state of things; that the very horrors of this war may prove the death-blow to war in the future.

"Magnus ab integro saeculorum nascitur ordo."

The one thing to strive for is to ensure, in the words of Earl Grey, "the collective responsibility of all civilised nations for the maintenance and enforcement of International Laws." It is encouraging to know that the resolution passed at the Whitehall Rooms, on October 27th, is likely to be acted upon,—that resolution was as follows:—

"That whereas the invasion of Belgium and Luxemburg by Germany was in violation of the Conventions of 1907, solemnly entered into and signed by Germany and 41 other States, this meeting is strongly of opinion that it is the duty of the Neutral Powers who were parties to the Conventions to take serious notice of this disregard of International Law, which has led to so terrible a sacrifice of human life and the wanton destruction of many noble architectural monuments and innumerable homes of a people who desired to be neutral in the war declared by Germany on other Powers."

S. PÉREZ TRIANA.

January 15th, 1915.